Supreme Court, U.S.
FILED
95-92 JUN 28 1995

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

KENNETH FRANK OWEN,

Petitioner,

V.

PEOPLE OF THE STATE
OF CALIFORNIA,

Respondents,

On Petition For Writ Of Certiorari
To The
SUPREME COURT
OF THE
STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

KENNETH FRANK OWEN
IN PRO PER
6098 Slopeview Court
Castro Valley, CA 94552
Telephone: (510) 582-0540

QUESTIONS PRESENTED

I. Whether the evidence was sufficient to support a conviction of California Vehicle Code section 21461(a), and therefore meets the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution?

II. Whether California Vehicle Code section 21461(a) is "void-for-vagueness" under the due process clause of the Fourteenth Amendment to the United States Constitution.?

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
I. PROCEDURAL DUE PROCESS	5
II. VOID FOR VAGUENESS	17
CONCLUSION	22

INDEX TO APPENDICES

APPENDIX A
Traffic Docket and Minutes

APPENDIX B
Settled Statement on Appeal

APPENDIX C
Notice of Oral Argument

APPENDIX D
Ruling of the Superior Court, Appelate Department

APPENDIX E
Order Denying Petition for Rehearing and/or Application for Certification

APPENDIX F
Order Denying Petition for Writ of Habeas Corpus by the Court of Appeal

APPENDIX G
Order Denying Petition for Writ of Habeas Corpus by the Supreme Court

APPENDIX H
People v. Zeavin, unpublished opinion

SUPPLEMENTAL APPENDIX
Uniform Sign Chart (10 Copies)

TABLE OF AUTHORITIES

CASES	PAGE
County of Los Angeles Et Al. v. Kling 474 U.S. 936 (1985)	23
Gardner v. California 393 U.S. 367 (1969)	6
In re Murdock 68 C.2d 313 (1968)	6,7
In re Panchot 70 C.2d 105 (1968)	21
In re Wallace 3 C.3d 289 (1970)	6,7
In re Zerbe 60 C.2d 666 (1964)	7
Joint Anti-Fascist Refugee Committee v. McGrath 341 U.S. 123 (1951)	21
Kolender v. Lawson 461 U.S. 352 (1983)	18
McSherry v. Block 880 F.2d 1049 (9th Cir. 1989)	11
People v. Baker 69 C.2d 44 (1968)	20
People v. Superior Court (Caswell) 46 Cal.3d 381 (1988)	19
People v. Zeavin Unpublished (1967)	10,11
Rogers v. Alabama 192 U.S. 226 (1903)	23
Thomson v. City of Louisville 362 U.S. 199 (1960)	16,17

TABLE OF AUTHORITIES

	PAGE
STATUTES	
California Vehicle Code	
440	8,9
21352	8,9
21400	8,9,11
21401	9
21461(a)	3,7,9,17,18,22,23
Traffic Manual	
4-01.7	12
4-01.11	12
4-01.25	12,13
4-02.1	13
4-03.1	13
6-01.1	13,14
6-01.7	14
6-02.14	14
6-02.2	15

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner, KENNETH FRANK OWEN, respectfully preys that a writ of certiorari issue to review an order of the Supreme Court of the State of California denying a Petition for Writ of Habeas Corpus.

OPINIONS BELOW

No written opinions have been issued in this case. A Settled Statement On Appeal by the Municipal Court of California, County of Alameda, San Leandro-Hayward Judicial District, appears in Appendix B to this Petition.

JURISDICTION

The Supreme Court of the State of California's Order denying a Petition for Writ of Habeas Corpus was filed on March 30, 1995 and is set forth in Appendix G.

This Court's jurisdiction is invoked under 28 U.S.C. section 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On January 31, 1994 a trial was held in the Municipal Court of California, County of Alameda, San Leandro-Hayward Judicial District, before the Honorable Frank Lang, Commissioner. Petitioner was found guilty and fined $104 for violating California Vehicle Code section 21461(a). (See Appendix A)

Petitioner filed a timely appeal with the Superior Court of the State of California, County of Alameda, Appellate Department. Petitioner raised two issues on appeal: 1) Did the trial court err in not applying the law to the facts in this particular case; and 2) Is Vehicle Code section 21461(a) "Void for Vagueness". Petitioner filed a fifteen page brief in support of these issues. The Deputy District Attorney for the State of California did not file a brief or otherwise oppose Petitioner's position in

this matter.

The Appellate Department informed the parties that oral argument would not be necessary as the Judges of the Appellate Department had reviewed the records and briefs, and that there were currently no questions the Court had for any party. (See Appendix C)

On September 23, 1994 the Appellate Department of the Superior Court, without opinion, affirmed the order of the trial court 3-0. (See Appendix D)

Petitioner then timely filed a Petition for Rehearing and/or Application for Certification to the Court of Appeal on October 11, 1994. On October 27, 1994, the Appellate Department of the Superior Court, without opinion, denied Petitioner's request. (See Appendix E)

On November 30, 1994, Petitioner timely filed a Petition for Writ of Habeas Corpus in the Court of Appeal of the State of California for the First

Appellate District. On December 2, 1994, the Court of Appeal, without opinion, denied the Petition. (See Appendix F)

On December 27, 1994, Petitioner timely filed a Petition for Writ of Habeas Corpus in the Supreme Court of the State of California. On March 30, 1995, the Supreme Court, without opinion, denied the Petition. (See Appendix G)

REASONS FOR GRANTING THE WRIT

I. PROCEDURAL DUE PROCESS

Petitioner has exhausted all appellate remedies at law in the State of California. Notwithstanding case law to support Petitioner's innocence every California Court has refused to provide Petitioner with a reason for finding Petitioner guilty. The State's actions are arbitrary, and not supported by the evidence. The State's actions constitute a denial of Petitioner's constitutional

rights under the Due Process Clause of the Fourteenth Amendment.

Petitioner has always maintained that the "[s]tatute under which he was convicted did not prohibit his conduct." (citations omitted) In re Wallace, 3 C.3d 289, 293 (1970)

> Certainly, under normal circustances, the proper procedure for a defendant desiring further review of a criminal judgment affirmed by the appellate department is to apply for such certification pursuant to rule 63(b); thereafter a petition for writ of habeas corpus will be entertained if certification is denied (In re Panchot 1968) 70 Cal.2d 105, 107 [73 Cal.Rptr. 689, 448 P.2d 385]) . . . In re Wallace, 3 C.3d 289, 292 (1970)

> [1] Under California law, while the State has an appeal from an order discharging a prisoner in a habeas corpus proceeding, 1/ the prisoner has no appeal where his petition is denied. See Loustalot v. Superior Court, 30 Cal.2d 905, 913, 186 P.2d 673, 677-678. But he may file a petition for habeas corpus either in the intermediate Court of Appeal or in the Supreme Corut.2/ Gardner v. California, 393 U.S. 367, 368 (1969)

> [2]Since there is no material dispute as to the facts, and the statute under which petitioner was convicted does not prohibit his conduct, habeas corpus is a proper remedy. (In re

> Zerbe (1964) 60 Cal.2d 666, 668 [36 Cal.Rptr. 286, 388 P.2d 182, 10 A.L.R.3d 840].) In re Murdock, 68 C.2d 313, 316 (1968)
>
> [I]t should be stressed at the outset that, since we are not confronted with the availability of civil remedies but with the construction of a criminal statute, petitioner must be given the benefit of every reasonable doubt as to whether the statute was applicable to him. (citations omitted) In re Zerbe, 60 C.2d 666, 668 (1964)

Petitioner does not dispute the facts in this case. (See Settled Statement on Appeal,Appendix B) "In the circumstances, we may likewise take the settled statement as presenting the materially undisputed facts of the case within the meaning of the Zerbe rule." In re Wallace, 3 C.3d 289, 294 (1970)

> California Vehicle Code section 21461(a) provides:
> It shall be unlawful for any driver of a vehicle to fail to obey any sign or signal erected or maintained to indicate and carry out the provisions of this code or any local traffic ordinance or resolution adopted pursuant to a local traffic ordinance, or to fail to obey any device erected or maintained pursuant to Section 21352.

California Vehicle Code section 21352 provides:
The Department of Transportation may erect stop signs at any entrance to any state highway and whenever the department determines that it is necessary for the public safety and the orderly and efficient use of the highways by the public, the department may erect and maintain, or cause to be erected and maintained, on any state highway any traffic control signal or any official traffic control device REGULATING or PROHIBITING the turning of vehicles upon the highways, allocating or restricting the use of specified lanes or portions of the highway by moving vehiclular traffic, establishing crosswalks at or between intersections, or restricting use of the right-of-way by the public for other than highway purposes.(emphasis added)

California Vehicle Code section 440 provides:
An "official traffic control device" is any sign, signal, marking, or device, consistent with Section 21400, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, but does not include islands, curbs, traffic barriers, or other roadway design features.

California Vehicle Code section 21400 provides in part:
The Department of Transportation shall, after consultation with local agencies and public hearings, adopt rules and regulations prescribing uniform standards and specifications for all official traffic control

devices placed pursuant to this code, including, but not limited to, stop signs, yield right-of-way signs, speed restriction signs; railroad warning approach signs, street name signs, lines and markings on the roadway, and stock crossing signs placed pursuant to Section 21364.

California Vehicle Code section 21401 provides:
Except as provided in Section 21374, only those official traffic control devices that conform to the uniform standards and specifications promulgated by the Department of Transportation shall be placed upon a street or highway.

A fair interpretation of Vehicle Code sections 21461(a), 21352, 440, 21400, and 21401 is that it is unlawful to disobey traffic control devices erected and maintained by the Department of Transportation which Regulate or Prohibit the turning of vehicles upon the highway. It is not unlawful to disobey a traffic control device erected and maintained by the Department of Transportation that merely Warns or Guides traffic. It would be absurd to imply that it is a violation of the

Vehicle Code to go to San Francisco if a Guide Sign reads: SACRAMENTO 17 MILES

It is also unlawful to disobey a traffic control device that indicates and carries out provisions of the code. There are no provisions of the code making it unlawful to cross a solid white line or gore point. There are no provisions of the code making it unlawful to ignore warning signs or markings on the roadway.

The Appellate Department of the Superior Court, Los Angeles County, in an unpublished opinion, dealt squarely with this issue and concluded that "[o]nly double parallel lines are authorized pavement markings restricting traffic. Accordingly, diagonal lines on the pavement are directory only. Failure to comply with such directions is not a violation of the Vehicle Code because 'diagonal lines are not effective to indicate no driving over the marking.'"

People v. Zeavin, Appellate Department of the Superior Court, Los Angeles County, (April 21, 1967) (See Appendix H)

> 2. The construction of a state statute by the Appellate Department of the Superior Court of California is binding on all, including the federal courts, unless it conflicts with decisions of the California Court of Appeal or the California Supreme Court. . . .
>
> We find therefore that we may not summarily disregard the Appellate Department's construction of section 653g merely on the basis that its construction was rendered in an unpublished opinion. McSherry v. Block, 880 F.2d 1049, 1052, 1053 fn.2 (9th Cir. 1989)

California Vehicle Code section 21400 requires the California Department of Transportation to adopt rules and regulations prescribing uniform standards and specifications for all official traffic control devices. In order to determine which Traffic Control Devices regulate or prohibit the turning of vehicles upon the highway, Petitioner purchased a "Traffic Manual" from the Department of Transportation, Publication

Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, telephone (916) 445-3520, at a cost of $33.00. A "Uniform Sign Chart" depicting Warning Signs, Regulatory Signs, Guide Signs, and Construction Signs was also purchased for $4.00. Ten copies of the Uniform Sign Chart are separately appended to this Petition.

Traffic Manual section 4-01.7 provides:

> There are four general types of traffic signs:
> 1. Warning signs, to caution motorists of road conditions which would not be reasonably apparent to a person using due care.
> 2. Regulatory signs, to inform traffic of regulations governing movements, parking, speed, weights, etc.
> 3. Guide signs to show route designations, destinations, directions, distances, services, points of interest, and other geographical, recreational, or cultural information.
> 4. Construction signs, . . .

Traffic Manual section 4-01.11 provides:

> WHITE is used as a background for regulatory signs . . .
> YELLOW is used as the background color on warning signs except in work zones where orange is specified.
> GREEN is used as a background color for guide signs . . .

Traffic Manual section 4-01.25 provides:

A warning sign is normally placed in advance of the condition to which it calls attention. A regulatory sign is normally placed where its mandate or prohibition applies or begins. Guide signs are placed, where needed, to keep motorists informed of the route to their destination.

Traffic Manual section 4-02.1 provides:

Warning signs are used to guide and warn traffic of conditions on or adjacent to a highway or street which would not be reasonably apparent to, and would not have been anticipated by, a vehicle operator exercising due care.

Warning signs alert vehicle operators to use caution, reduce speeed or make a maneuver in the interest of the operator's safety and/or that of other vehicle operators and pedestrians.

Traffic Manual section 4-03.1 provides:

Regulatory signs inform highway users of traffic laws or regulations and are erected only when and where needed to fulfill this purpose. Signs are not ordinarily needed to confirm rules of the road.

State laws specify that certain regulations are enforceable only when made known by official signs.

Some regulatory signs are related to operational controls but do not impose any obligations or prohibitions. For example, signs giving advance notice of, or marking the end of, a restricted zone are included in the regulatory group.

Traffic Manual section 6-01.1 provides:

Markings, as covered in this chapter, include lines and markings applied to the pavement, raised pavement markers,

delineators, object markers, and special pavement treatments.

Markings have definite and important functions to perform in a proper scheme of traffic contol. In some cases, they are used to supplement the regulations or warnings of other devices such as traffic signs or signals. In other instances, they are used alone and produce results that cannot be obtained by the use of any other device. In such cases they serve as a very effective means of conveying certain regulations and warnings that could not otherwise be made clearly understandable.

Traffic Manual section 6-01.7 provides:

3. A single solid white line is used to delineate the edge of a traffic lane where travel in the same direction is permitted on both sides of the line, but crossing the line is discouraged. It is also used to mark the right edgeline. A wide solid white line is used for emphasis where crossing it requires unusual care. It is also used as a line to delineate turnouts, left or right-turn lanes, freeway entrance and exit ramps and bicycle lanes.

Traffic Manual section 6-02.14 provides:

Word and symbol markings on the pavement may be used for the purpose of guiding, warning, or regulating traffic. They normally supplement standard signing. They should be limited to not more than a total of three lines of information. Except as noted in Chapter 10, SCHOOL AREA PEDESTRIAN SAFETY, of this manual, they shall be white in color and should be no more than one lane in width.

Where a turning movement is mandatory, an arrow marking accompanied by a regulatory sign shall be used. . .

Traffic Manual section 6-02.2 provides:

> White lanelines separate lanes of traffic traveling in the same direction and shall be used on all multilane highways.
>
> A single solid white line may be used as the laneline in critical areas to discourage lane changing. . . .

The Settled Statement on Appeal (Appendix B) suggests that Petitioner disobeyed a solid white line by cutting across it. The Statement also suggests that Petitioner disobeyed signs and markings indicating that traffic must merge left, as well as disobeying three arrows directing traffic.

A look at the Uniform Sign Chart reveals that there are no Regulatory Signs indicating Traffic Must Merge Left. There are, however, Warning Signs indicating Thru Traffic Merge Left. A Warning Sign is used to guide and warn traffic and is not regulatory. It is not unlawful to disobey a Warning Sign. Crossing a solid white line is not a violation of the Vehicle Code. Cutting

across a gore point is not a violation of the Vehicle Code. Arrows painted on the roadway are advisory only unless accompanied by a Regulatory Sign.

The undisputed facts in this case are wholly devoid of evidence to support Petitioner's conviction. The statute under which Petitioner was convicted did not prohibit his conduct. Habeas corpus was a proper remedy. Notwithstanding a lack of evidence to support Petitioner's conviction, every appellate court in the State of California has refused to grant judicial relief to Petitioner. Perhaps even more disturbing, is that no appellate court has provided any reason for its decisions.

> [5] Our examination of the record presented in the petition for certiorari convinced us that although the fines here are small, the due process questions presented are substantial and we therefore granted certiorari to review the police court's judgments. 360 U.S. 916, 79 S.Ct. 1433, 3 L.Ed.2d 1532. Compare Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct.1064, 30 L.Ed. 220 (San

> Francisco Police Judges Court judgment imposing a $10 fine, upheld by state appellate court, held invalid as in contravention of the Fourteenth Amendment).
>
> [6-8] The city correctly assumes here that if there is no support for these convictions in the record they are void as denials of due process. Thompson v. City of Louisville, 362 U.S. 199, 203, 204 (1960)
>
> Thus we find no evidence whatever in the record to support these convictions. Just as "Conviction upon a charge not made would be sheer denial of due process,"12/ so is it a violation of due process to convict and punish a man without evidence of his guilt.13/ Id. at page 206

A careful analysis of the Vehicle Code and Traffic Manual supports a conclusion that the actions of the Petitioner were not in violation of any law.

II. VOID FOR VAGUENESS

A careful and detailed analysis of the Vehicle Code and Traffic Manual reveals that section 21461(a) can apply to certain situations. For example, it would be unlawful to change lanes from the right lane to the left lane after

encountering a regulatory sign which reads: Right Lane Must Exit. Under the same circumstances, it would not be unlawful to change lanes from the left lane to the right lane.

To know what Official Traffic Control Devices are unlawful to disobey, requires an in depth analysis of numerous Vehicle Code sections as well as numerous Traffic Manual sections. On its face, Vehicle Code section 21461(a) is patently vague. It would be helpful if the ordinary driver was also a traffic engineer. Because the ordinary person cannot understand what conduct is prohibited, the statute is "void-for-vagueness".

> [2,3] As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcememt. (citations omitted) Kolender v. Lawson, 461 U.S. 352, 357 (1983)

> "A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis , with the attendant dangers of arbitrary and discriminatory application." (Grayned, supra, 408 U.S. at pp. 108-109, fn. omitted [33 L.Ed.2d at pp. 227-228].) "Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a 'standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.'" (Kolender v. Lawson (1983) 461 U.S. 352, 358 [75 L.Ed.2d 903, 909, 103 S.Ct. 1855], quoting Smith v. Goguen, supra, 415 U.S. at p. 575 [39 L.Ed. 2d at p. 613].) People v. Superior Court (Caswell), 46 Cal.3d 381, 390. (1988)

That's exactly what we have here. A California Highway Patrol Officer subjectively interpreted the Vehicle Code in a way that made it unlawful to disobey Warning Signs and Markings on the higway. The Trial Judge found the Petitioner guilty based on this interpretation of the statute. Three Judges from the Appellate Department of the Superior Court affirmed the judgment of the Trial Court. Three Judges from the Court of

Appeal, First Appellate District denied Petitioner's petition for writ of habeas corpus. Chief Justice LUCAS, of the California Supreme Court denied Petitioner's petition for writ of habeas corpus.

It should now be apparent that it is not unlawful to disobey Warning Signs and Markings on the Highway. The statute upon which Petitioner was convicted does not prohibit his conduct, yet policemen and judges have arbitrarily convicted this Petitioner as a result of the statute's vagueness.

> [1] In construing a criminal statute, a defendant "must be given the benefit of every reasonable doubt as to whether the statute was applicable to him." (In re Zerbe, 60 Cal.2d 666, 668 [36 Cal.Rptr. 286, 388 P.2d 182, 10 A.L.R. 3d 840].) People v. Baker, 69 C.2d 44, 46 (1968)

Perhaps even more disturbing to Petitioner was the fact that no judge in the State of California gave a reason for its decision.

[T]hree principles of "natural justice" were stated to be that "a man may not be a judge in his own cause," that "No party ought to be condemned unheard," and that "a party is entitled to know the reason for the decision." Report of Committee on Ministers' Powers, Cmd. 4060, pp 75-80. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170, fn. 17 (1951)

"In a government like ours, entirely popular, care should be taken in every part of the system, not only to do right, but to satisfy the community that right is done." 5 The Writings and Speeches of Daniel Webster, 163 . . . "Time and again this court has said that justice must not only be done but must manifestly be seen to be done . . ." Rex v. Bodmin JJ1, [1947] 1 K.B. 321, 325. Id. at page 172, fn. 19.

[T]he supremacy clause of the federal Constitution precludes a state court from arbitrarily refusing to consider "federal questions of law." . . . As we made clear in the case of In re Sterling (1965), 63 Cal.2d 486, 487, 47 Cal.Rptr. 295, 207 407 P.2d 5,7: "If the violation of a petitioner's constitutional rights * * * had any bearing on the issue of his guilt, there should be no doubt that habeas corpus would be available." In re Panchot, 70 C.2d 105, 107, fn. 4 (1968)

CONCLUSION

In pursuing the ends of justice, Petitioner has expended far more time and money than the original $104 fine imposed by the conviction of Vehicle Code section 21461(a). A rational decision would have been to simply pay the fine and forget about it. If any court in the State of California would have provided Petitioner with a reason for its actions, Petitioner probably would have been satisfied that justice had been done.

The State of California has a lot to gain by the Courts arbitrary refusal to consider whether Vehicle Code section is void-for-vagueness. The California Highway Patrol Information Department, (916-657-7154) reported that in 1994 there were 20,827 citations issued for Vehicle Code section 21461(a). Assuming the fines are all $104 and most people are convicted, this easily amounts to

over two million dollars per year in revenue for the State of California. If Vehicle Code section 21461(a) is void-for-vagueness, then the driving public is being defrauded out of millions of dollars yearly. This case reaches far beyond the cause at hand.

> "In our law the opinion has in addition a central forward-looking function which reaches far beyond the cause in hand: the opinion has as one if not its major office to show how like cases are properly to be decided in the future. This also frequently casts its shadow before, and affects the deciding of the cause in hand. (if I cannot give a reason I should be willing to stand to, I must shrink from the very result which otherwise seems good.) Thus the opinion serves as a steadying factor which aids reckonability." K. Llewellyn, The Common Law Tradition 26 (1960), quoted in Reynolds & Richman, supra n. 1, at 1204. County of Los Angeles Et Al. v. Kling, 474 U.S. 936, n.6 at page 940 (Stevens, J., dissenting) (1985).

It is a necessary and well settled rule that the exercise of jurisdiction by this court to protect constitutional rights cannot be declined when it is plain that the fair result of a decision is to deny the rights. Rogers v. Alabama, 192 U.S. 226, 230 (1903)

The California Supreme Court Order denying the Petition for Writ of Habeas Corpus is arbitrary, unreasonable and not supported by the evidence. Futhermore, the Court's decision constitutes a denial of Petitioner's constitutional rights under the Due Process Clause of the Fourteenth Amendment.

For the reasons set forth above, a writ of certiorari should issue to review the Order of the Supreme Court of the State of California in this matter. The conviction of California Vehicle Code section 21461(a) should be reversed.

DATED: June 28,1995

Respectfully submitted,

_____

KENNETH FRANK OWEN

APPENDIX A

TRAFFIC DOCKET AND MINUTES

MUNICIPAL COURT FOR THE
SAN LEANDRO- HAYWARD JUDICIAL DISTRICT
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

DOCKET AND MINUTES

CITING AGENCY: CY
DEPT. 8 DOCKET NUMBER 0009391659
CAL.DATE 01/31/94 CITATION NUMBER VC18719
ISSUE DATE 08/05/93
ROC CT COURT TIME 15:00
SUM JUDG.DATE 08/09/94
JUDGE/COMMISSIONER LANG
COURTROOM STAFF WIESEMANN
NAME/DISPATCHER NAME OWEN KENNETH F
CASH/BOND AMOUNT $.00 RECIEPT NUMBER
POSTED BY

PROCEEDINGS

CHARGES	PLEA	PROCEEDING
I 21461A	FG	104.00

Defendant sworn,testified.Officer present sworn,testified. Mr. Owen sworn,testified
ADDITIONAL PROCEEDING: PRIORS=00
OFN: VANDERMEL, L.D.

IMPORTANT:THE BOX(ES) CHECKED (*) BELOW APPLY TO YOU

YOUR NEXT COURT DATE IS_____,19__ IN
DEPT.#_____AT_____AM/PM FOR_____
PAY YOUR BAIL/FINE/FEE OF $104.00
AT WINDOW_____ON/BEFORE 2-28,1994 BY
5:00 P.M. OR YOU MUST RETURN TO DEPT.
_____ON_____,19__AT_____AM/PM

APPENDIX B

IN THE MUNICIPAL COURT OF CALIFORNIA, COUNTY OF ALAMEDA, SAN LEANDRO-HAYWARD JUDICIAL DISTRICT, BEFORE THE HONORABLE FRANK LANG, COMMISSIONER

The People of the State of California,

Plaintiff,

vs.

KENNETH F. OWEN,

Defendant.

_____/

Case No: 939-165-9

SETTLED STATEMENT ON APPEAL

STATEMENT: The defendant was issued a citation on August 5, 1993, for a violation of Section 21461A of the California Vehicle Code. The defendant was duly arraigned on September 29, 1993, informed of his constitutional rights, entered a plea of not guilty, waived time, amd the matter was set for trial on January 31, 1994, in the above entitled court.

OFFICER'S TESTIMONY: The officer testified that at the time and place in question he was standing on the shoulder of the highway monitoring traffic on Interstate 880 norhtbound. At that point the number four lane merges into the number three lane and there is a solid white line extending approximately 1,000 feet back from the gore point indicating that traffic in the two lanes should not cross to the other. Also there is a sign in the number four lane informing the traffic must merge left, and there is a sign on the road itself so informing traffic, and there are three arrows directing traffic. The defendant had been in the number four lane, and cut across the gore point to go to the offramp to highway 238.

DEFENDANT'S TESTIMONY: The defendant presented no testimony, but presented to the Court a legal citation which the Court considered.

DEFENDANT'S CONTENTIONS ON APPEAL: See defendant's proposed settled statement.

Dated:_____

_____
Frank Lang
Commissioner

APPENDIX C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA, APPELLATE DEPARTMENT

Plaintiff: People
vs
Defendant: KENNETH FRANK OWEN

Appellate No. 3325
Muni Case No. 9391659

NOTICE OF ORAL ARGUMENT

TO:
Kenneth Frank Owen
6098 Slopeview Ct.
Castro Valley,
CA 94552

(Attorney for Appellant)

TO:
Morris D. Jacobson
Deputy Dist. Atty.
1225 Fallon Street
9th Floor
Oakland, CA 94612
(Attorney for Defendant)

The Judges of the Appellate Department have reviewed the records and briefs in the above-entitled case. There are currently no questions the Court has for any party. If oral argument is desired by any party, a written request for oral argument must be filed with the Clerk of the Appellate Department in room 109. A copy must be served on all interested parties within ten (10) days of this notice. The case will then be placed on the Court's calendar for oral argument.

IF NO REQUEST FOR ORAL ARGUMENT IS RECEIVED WITHIN THE 10-DAY PERIOD, IT WILL BE DEEMED THAT ORAL ARGUMENT HAS BEEN WAIVED (CALIFORNIA RULES OF COURT, 134 AND 190) AND THE MATTER WILL BE SUBMITTED AT SUCH TIME AS THE COURT APPROVES SUCH WAIVER. THE COURT WILL THEN DECIDE THE CASE WITHOUT ORAL ARGUMENT AND WITHOUT THE NECESSITY OF APPEARANCES BY ANY COUNSEL.

Date: August 24, 1994

RONALD G. OVERHOLT, EXEC. OFFICER/CLERK

By "s/DOROTHY DUCKETT"
Deputy, Appellate Dept.
(510-272-6780)

APPENDIX D

Date: 9-23-94 DEPT. 24

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

Hon. JOANNE PARRILLE, Presiding Judge
WILLIAM McKINSTRY, Judge
KEN KAWAICHI, Judge
Dorothy Duckett, Deputy Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff/Respondent	Counsel appearing for Plaintiff Morris D.Jacobson
vs.	
KENNETH F. OWEN Defendant/Appellant	Counsel appearing for Defendant No appearance

---

NATURE OF PROCEEDING: RULING OF THE COURT

ACTION No. 3325
Muni No. 9391659

In the above entitled action, the Court orders the judgment from the trial court affirmed 3-0. Remittitur to issue.

COPIES OF THIS MINUTE ORDER MAILED THIS DATE TO:

Kenneth Frank Owen
6098 Slopeview Court
Castro Valley,
CA 94552

Morris D. Jacobson
Deputy Dist. Atty.
1225 Fallon Street
9th Floor
Oakland, CA 94612

San Leandro-Municipal Court
24405 Amador Street
Hayward, CA 94544

APPENDIX E

Date: 10-27-94 DEPT. 24

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

Hon. WILLIAM McKINSTRY, Judge
Malkai Begum, Deputy Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff/Respondent	Counsel appearing for Plaintiff Morris D.Jacobson
vs.	
KENNETH F. OWEN Defendant/Appellant	Counsel appearing for Defendant

---

NATURE OF PROCEEDING: ACTION No. 3325
Muni No. 9391659

Appellant's Petition for Rehearing and/or Application for Certification.

In the above entitled action, Appellant having submitted a Petition for Rehearing and/or Application for Certification following the decision rendered by court on 9/16/94 comes now the Court and makes the following order:

The Request/Application taken under advisement and fully considered, Court orders: Said Petition/Application is hereby denied.

COPIES OF THIS MINUTE ORDER MAILED THIS DATE TO:

Kenneth Frank Owen 6098 Slopeview Court Castro Valley, CA 94552	Morris D. Jacobson Deputy Dist. Atty. 1225 Fallon Street 9th Floor Oakland, CA 94612

APPENDIX F

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOR THE FIRST APPELLATE DISTRICT
DIVISION THREE

FILED DEC 2 1994
Court of Appeal
First District
RON D. BARROW,
Clerk

In re KENNETH FRANK OWEN

on Habeas Corpus.

A068046

_____/

BY THE COURT:

The Petition for writ of habeas corpus is denied. (Merrill,Acting P.J., Chin, J. and Corrigan, J. participated in the decision.)

Dated DEC 2, 1994

"S/MERRILL" ACTING P.J.

APPENDIX G

ORDER DENYING WRIT OF HABEAS CORPUS

No. SO44051

IN THE SUPREME COURT OF CALIFORNIA

IN RE KENNETH FRANK OWEN

ON

HABEAS CORPUS

Petition for writ of habeas corpus DENIED

SUPREME COURT FILED
MAR 30 1995
Robert Wandruff Clerk
DEPUTY

"s/LUCAS"
Chief Justice

APPENDIX H

TRAFFIC CONTROL - MARKINGS ON PAVEMENT

People v. Zeavin

Appellate Department
of the Superior Court
Los Angeles County

April 21, 1967

Defendant was charged with a violation of Vehicle Code Section 21461. This section provides in part: "It shall be unlawful to fail to obey . . . any device erected or maintained pursuant to Section 21352." The latter section provides in part: "The Department of Public Works . . . may erect and maintain or cause to be erected and maintained, . . . any official traffic control device . . . allocating or restricting the use of . . . portions of the highway by moving vehicular traffic . . . ." (Underscore added in original.) Section 440 defines the term undersored above thus: "An 'official traffic control device' is any . . . marking, or device not inconsistent with this code, placed . . . for the purpose of regulating . . . or guiding traffic."

The testimony on behalf of the respondent was that appellant drove along an area marked with diagonal white lines between two white lines at the confluence of the on-ramp from Avenue 22 and the southbund portion of the Pasadena Freeway.

The court reviews other sections of the Vehicle Code and concludes that only double parallel lines are authorized pavement markings restricting traffic. Accordingly, diagonal lines on the pavement are directory only. Failure to comply with such directions is not a violation of the Vehicle Code because "diagonal lines are not effective to indicate no driving over the marking."